

Notification of Modified Page 16 in Attachment 1 to Staff Report

The parties to the proposed Settlement Agreement and Mutual Release (Agreement), included as Attachment 1 to the Staff Report dated June 21, 2022, have agreed to substitute the attached page as a “slip sheet” in place of page 16 in the Agreement. The only proposed change to the content of page 16 in the Agreement is the addition of a new clause (b) in Section 11.2, which is titled “Limitation on Scope.” If the City Council approves the Agreement, the parties will use the attached page as the final version of page 16 in the Agreement.

[see next page for replacement version of page 16]

The Parties further expressly waive all rights and benefits conferred upon them by any provision of any other law similar to Section 1542 and expressly agree that the releases set forth above shall be given full force and effect, according to the express terms and provisions of this Agreement, as to unknown and unsuspected Claims arising from or relating to the Dispute.

10.6 Essential Terms. The Parties acknowledge that the provisions of this Section 10 are essential and material terms of the Agreement, and that without such provisions, the Parties would not have entered into this Agreement.

10.7 Conflict. In the event of any actual or perceived conflict between this Section 10 and Section 11, the provisions of Section 11 shall control.

11. City's Obligation to Defend and Indemnify.

11.1 Scope of Defense and Indemnification. Except as described in Section 11.2 of this Agreement, City shall defend and indemnify Cisterra, the Cisterra Entities, Lender, and the Lender Entities (collectively, "**Indemnitees**") from and against all Claims: (a) to which any of the Indemnitees is subject because of any past or existing estate or interest in the CCP Property or the 101 Ash Property (collectively, "**Properties**") through and including the Closing Date; and (b) directly or indirectly arising or alleged to arise from or in connection with any of the following: (i) the Prior CCP Transactions or the Prior 101 Ash Transactions; (ii) injury to or death of any person, or damage to or loss of property, on or about the Properties or on adjoining property, sidewalks, streets or ways; (iii) the ownership, use, condition (including latent and other defects whether or not discoverable by Landlord), design, occupancy, lease, sublease, construction, maintenance, repair, or rebuilding of the Properties, including the 101 Ash Renovations, or on adjoining property, sidewalks, streets or way; (iv) violation of any legal requirement, whether with respect to environmental protection or hazardous waste matters or otherwise, with respect to the Properties; (v) any act or omission of City or its agents, contractors, subcontractors, licensees, sublessees, or invitees with respect to one or more of the Properties; (vi) the actual or alleged presence, use, storage, generation, or release of any Hazardous Materials on, under, from, or at the Properties or any portion thereof or any surrounding areas for which City or any of the Indemnitees has or is alleged to have any legal obligation, at any time, including the cost of assessment, containment, or removal of any such Hazardous Materials, the cost of any remedial work in response to a release of any such Hazardous Materials so that it does not migrate or otherwise cause or threaten danger to present or future public health, safety, welfare or the environment, and costs incurred to comply with environmental laws in connection with all or any portion of the Properties or the operation thereof, or any surrounding areas for which City or any of the Indemnitees has or is alleged to have any legal obligation; (vii) the Gordon Lawsuit, the Bahena Lawsuit, the Perez Lawsuit, the Adams Lawsuit, and the Guerrero Lawsuit; or (viii) the Dispute.

11.2 Limitation on Scope. City's defense and indemnification obligations under Section 11.1 of this Agreement shall expressly exclude (a) any Claim initiated by or on behalf of Jason Hughes or the Hughes Entities against any of the Indemnitees, and (b) any action or proceeding alleging a criminal offense initiated and prosecuted by a governmental entity other than City, and any penalty, fine or other monetary amounts owed by an Indemnatee and resulting from a final, non-appealable judicial ruling in such action or proceeding.